

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 29 be amended to read as follows:

- 1 Page 4, between lines 36 and 37, begin a new paragraph and insert:
- 2 "SECTION 4. IC 8-1-2-83 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 83. (a) ~~No~~ **This section**
- 4 **does not apply to the following:**
- 5 **(1) A corporation organized or operating under IC 8-1-13.**
- 6 **(2) A corporation that:**
- 7 **(A) is organized under IC 23-17; and**
- 8 **(B) has members that are local district corporations as**
- 9 **described in IC 8-1-13-23.**
- 10 **(b) As used in this section, "control" means the power to direct**
- 11 **the management and policies of a public utility, utility company, or**
- 12 **holding company through:**
- 13 **(1) ownership of voting securities or stock;**
- 14 **(2) the terms of a contract; or**
- 15 **(3) other means.**
- 16 **The term does not include power to direct management and**
- 17 **policies derived from holding an official position or corporate**
- 18 **office with the public utility, utility company, or holding company.**
- 19 **A person that owns, controls, or has the power to vote or the power**
- 20 **to vote proxies that constitute at least twenty percent (20%) of the**
- 21 **total vote power of a public utility, utility company, or holding**
- 22 **company is presumed to have control of the public utility, utility**
- 23 **company, or holding company.**
- 24 **(c) As used in this section, "holding company" means a**

company that has control over at least one (1) of the following:

(1) A public utility.

(2) A utility company.

(d) As used in this section, "person" means:

(1) an individual;

(2) a firm;

(3) a corporation;

(4) a company;

(5) a partnership;

(6) a limited liability company;

(7) an association;

(8) a trustee;

(9) a lessee; or

(10) a receiver.

(e) As used in this section, "reorganization" means a transaction that results in:

(1) a change in the ownership of a majority of the voting capital stock of a public utility;

(2) a change in the ownership or control of an entity that owns or controls a majority of the voting capital stock of a public utility;

(3) the merger of two (2) or more public utilities; or

(4) the acquisition by a public utility of substantially all the assets of another public utility.

(f) As used in this section, "utility company" means every corporation, company, partnership, limited liability company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment for the:

(1) conveyance of telegraph or telephone messages;

(2) production, transmission, delivery, or furnishing of heat, light, water, or power; or

(3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that acquires, owns, or operates any of the foregoing facilities.

(g) A public utility as defined in section 1 of this chapter, shall may not do any of the following without approval of the commission after a hearing:

(1) Sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation. ~~or~~

(2) Contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation. ~~without the approval of the commission after hearing.~~

~~And no such~~

1           **(3) Contract for or effect a reorganization of the public utility.**

2           **(4) Acquire control of a public utility, utility company, or**  
 3           **holding company.**

4           **(h) A person may not acquire control of a public utility or a**  
 5           **holding company of a public utility without approval of the**  
 6           **commission after a hearing.**

7           **(i) A holding company that controls one (1) or more public**  
 8           **utilities may not acquire control of a utility company without**  
 9           **approval of the commission after a hearing.**

10          **(j) A public utility, except temporarily or in case of emergency and**  
 11          **for a period of not exceeding thirty (30) days, shall may not** make any  
 12          special contract at rates other than those prescribed in its schedule of  
 13          rates theretofore filed with the commission, and in force, with any other  
 14          utility for rendering any service to or procuring any service from such  
 15          other utility, without the approval of the commission. It shall be lawful,  
 16          however, for any utility to make a contract for service to or from  
 17          another utility at rates previously filed with and approved by the  
 18          commission and in force.

19          ~~(b)~~ **(k)** The approval of the commission of the sale, assignment,  
 20          transfer, lease, or encumbrance of a franchise or any part thereof under  
 21          this section shall not revive or validate any lapsed or invalid franchise,  
 22          or enlarge or add to the powers and privileges contained in the grant of  
 23          any franchise or waive any forfeiture. No such public utility shall  
 24          directly or indirectly purchase, acquire, or become the owner of any of  
 25          the property, stock, or bonds of any other public utility authorized to  
 26          engage or engaged in the same or a similar business, or operating or  
 27          purporting to operate under a franchise from the same or any other  
 28          municipality or under an indeterminate permit unless authorized so to  
 29          do by the commission.

30          **(l) The commission shall issue an order not later than one**  
 31          **hundred thirty-five (135) days after a petition seeking approval is**  
 32          **filed under this section. If the commission fails to issue an order**  
 33          **within one hundred thirty-five (135) days after the petition is filed,**  
 34          **the petition is considered approved.**

35          ~~(c)~~ **(m)** Nothing contained in this section shall prevent the holding  
 36          of stock lawfully acquired before May 1, 1913, or prohibit, upon the  
 37          surrender or exchange of said stock pursuant to a reorganization plan,  
 38          the purchase, acquisition, taking, or holding by the owner of a  
 39          proportionate amount of the stock of any new corporation organized to  
 40          take over at foreclosure or other sale, the property of the corporation  
 41          whose stock has been thus surrendered or exchanged.

42          ~~(d)~~ **(n)** Every contract by any public utility for the purchase,  
 43          acquisition, assignment, or transfer to it of any of the stock of any other  
 44          public utility by or through any person, partnership, limited liability  
 45          company, or corporation without the approval of the commission shall  
 46          be void and of no effect, and no such transfer or assignment of such

1 stock upon the books of the corporation pursuant to any such contract  
2 shall be effective for any purpose.

3 SECTION 5. IC 8-1-2-115.5 IS ADDED TO THE INDIANA CODE  
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
5 1, 2002]: Sec. 115.5. (a) As used in this section, "account" refers to  
6 the commission public utility fund account established under  
7 IC 8-1-6.

8 (b) As used in this section, "order" means:

- 9 (1) a decision;
- 10 (2) a decree;
- 11 (3) a demand;
- 12 (4) a determination;
- 13 (5) a direction;
- 14 (6) an order;
- 15 (7) a requirement; or
- 16 (8) a rule;

17 of the commission.

18 (c) As used in this section, "utility" means:

- 19 (1) a public utility over which the commission has
- 20 jurisdiction; or
- 21 (2) the department of public utilities created under
- 22 IC 8-1-11.1.

23 (d) The commission may issue an order under subsection (e)  
24 only if it finds, after notice and hearing, that a utility has:

- 25 (1) violated a provision of this title;
- 26 (2) failed to comply with an order; or
- 27 (3) failed to comply with an administrative rule adopted by
- 28 the commission under this title.

29 (e) After making a finding under subsection (d), the commission  
30 may issue an order that does one (1) or more of the following:

- 31 (1) Imposes on a utility, other than a telephone company (as
- 32 defined in section 88 of this chapter) that provides local
- 33 exchange telephone service, a civil penalty of:
- 34 (A) five thousand dollars (\$5,000) for an initial violation or
- 35 noncompliance found under subsection (d); or
- 36 (B) fifteen thousand dollars (\$15,000) for a second or
- 37 subsequent violation or noncompliance found under
- 38 subsection (d).

39 For purposes of this subdivision, each day that a violation or  
40 noncompliance occurs is a separate violation or  
41 noncompliance.

42 (2) Orders a utility to cease and desist from a violation or  
43 noncompliance found under subsection (d).

44 (3) Mandates corrective action by a utility to alleviate a  
45 violation or noncompliance found under subsection (d).

46 (4) Revokes or modifies the terms of a utility's:

- 47 (A) certificate of territorial authority;

- 1 (B) certificate of public convenience and necessity; or
- 2 (C) other permit issued by the commission.
- 3 (f) The commission shall consider the following when
- 4 determining the amount of a civil penalty:
- 5 (1) The size of the utility.
- 6 (2) The gravity of the violation or noncompliance found under
- 7 subsection (d).
- 8 (3) The good faith of the utility in remedying the violation or
- 9 achieving compliance after receiving notice of a violation or
- 10 noncompliance under subsection (d).
- 11 (g) This section does not apply to a violation or noncompliance
- 12 found under subsection (d) that was the result of the following:
- 13 (1) Customer provided equipment.
- 14 (2) The negligent act of a customer.
- 15 (3) An emergency situation.
- 16 (4) An unavoidable casualty.
- 17 (5) An act of God.
- 18 (h) The attorney general shall bring an action to enforce an
- 19 order of the commission under subsection (e). If the attorney
- 20 general prevails in an action under this subsection, the attorney
- 21 general may recover reasonable attorney's fees and court costs.
- 22 (i) Civil penalties under this section are cumulative. A suit for
- 23 recovery of a civil penalty does not affect:
- 24 (1) the recovery of another civil penalty or forfeiture for a
- 25 separate violation or noncompliance; or
- 26 (2) a criminal prosecution against:
- 27 (A) a public utility;
- 28 (B) an agent, a director, an employee, or an officer of a
- 29 public utility; or
- 30 (C) any other person.
- 31 (j) The secretary of the commission shall direct that a civil
- 32 penalty collected under this section be distributed as follows:
- 33 (1) A penalty assessed for a violation that directly affects
- 34 ratepayers must be refunded directly to the customers of the
- 35 violating utility in the form of a credit on customer bills.
- 36 (2) A penalty assessed for a violation that directly harms
- 37 another utility must be awarded directly to the other utility.
- 38 (3) A penalty assessed for a violation that does not directly
- 39 affect ratepayers or harm another utility must be deposited
- 40 into the account.
- 41 (k) The commission shall use penalties deposited into the
- 42 account for:
- 43 (1) consumer education;
- 44 (2) promotion of utility competition; or
- 45 (3) any other purpose considered by the commission to
- 46 further the public interest.
- 47 The commission shall report to the regulatory flexibility committee

the distribution of deposits under this section.

(l) Penalties deposited into the account may not be included in:

(1) the calculation of the difference between actual expenditures and appropriations described in IC 8-1-6-1(b);

or

(2) any public utility fee credit.

SECTION 6. IC 8-1-2-128 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 128. (a) As used in this section, "utility" means:**

(1) a public utility over which the commission has jurisdiction; or

(2) the department of public utilities created under IC 8-1-11.1.

(b) If the commission:

(1) determines that the provision of utility service is necessary to:

(A) prevent injury to a person; or

(B) alleviate an emergency; and

(2) directs a utility to provide utility service;

the utility shall provide utility service within twenty-four (24) hours after receiving direction from the commission.

SECTION 7. IC 8-1-2-129 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 129. The commission may require a public utility to post a reasonable performance bond as a condition of the public utility's operation in Indiana. The amount of the reasonable performance bond may not exceed two million dollars (\$2,000,000).**

SECTION 8. IC 8-1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 2. (a) All fees herein prescribed shall be paid into the treasury of the state of Indiana through the secretary of the commission and quietused into an account to be known as the commission public utility fund account. This account shall be used for enforcing the provisions of IC 8-1-1 and IC 8-1-2 and shall be utilized only for the purpose of funding the expenses of the commission and the consumer counselor in amounts not in excess of their respective appropriations by the general assembly, plus the contingency fund. All appropriations under this chapter paid out of the commission public utility fund account shall be subject to the prior approval of the general assembly, the governor, and the state budget agency.**

(b) **The secretary of the commission shall deposit into the account the following:**

(1) Fees collected from municipalities under IC 8-1-2-85. ~~shall also be deposited in the commission public utility fund account, as if they were fees collected from public utilities under this chapter.~~

(2) **Civil penalties collected under IC 8-1-2-115.5.**

SECTION 9. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS

A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON  
PASSAGE]:

**Chapter 8.4. Merchant Power Plants**

**Sec. 1.** This chapter does not apply to a merchant power plant that has filed a petition with the commission under IC 8-1-2.5 before March 1, 2001, seeking an order that the commission decline to exercise, in whole or in part, its jurisdiction over the merchant power plant.

**Sec. 2. (a)** As used in this chapter, "merchant power plant" means a facility within Indiana used for the:

(1) production, transmission, delivery, or furnishing of heat, light, or power; and

(2) sale of electric energy exclusively on the wholesale market; to other public utilities, energy service providers, or power marketers within or outside Indiana.

(b) The term includes a facility that has made a significant alteration to the labor used to construct or remodel the facility. For purposes of this subsection, a facility makes a significant alteration in the labor used to construct or remodel a facility if the person uses contractors, subcontractors, or work crews that include workers who are not participants in or have not completed a jointly administered labor and management apprenticeship program approved by the United States Department of Labor's Bureau of Apprenticeship Training.

(c) The term does not include a facility that is owned, controlled, or operated by a person that is obligated contractually to provide substantially all of the wholesale power requirements of an electricity supplier under a contract extending at least five (5) years.

**Sec. 3.** Except as provided in section 1 of this chapter, a merchant power plant is subject to the jurisdiction of the commission.

**Sec. 4. (a)** The commission shall consider the following when acting upon any petition by a merchant power plant under IC 8-1-2.5 or IC 8-1-8.5:

(1) Location.

(2) Need.

(3) Financing.

(4) Reporting requirements.

(5) Impact on electric, water, and natural gas suppliers and customers.

(6) The recommendation of the department of natural resources under section 12 of this chapter.

(b) The commission shall issue a decision either approving or denying a merchant power plant's petition under IC 8-1-2.5 or IC 8-1-8.5 not later than eighteen (18) months after the date of the petition.

1       **Sec. 5. (a) When petitioning the commission under IC 8-1-2.5 or**  
 2       **IC 8-1-8.5, a merchant power plant must establish proof of**  
 3       **financial responsibility by filing one (1) or a combination of the**  
 4       **following with the commission:**

- 5           (1) A fully funded trust fund agreement.
- 6           (2) A surety bond with a standby trust fund agreement.
- 7           (3) A letter of credit with a standby trust fund agreement.
- 8           (4) An insurance policy with a standby trust fund agreement.
- 9           (5) Proof that the merchant power plant meets a financial test
- 10          established by the commission and equivalent to one (1) of the
- 11          items in subdivisions (1) through (4).

12       **(b) The amount of financial responsibility that a merchant**  
 13       **power plant must establish under this section shall be determined**  
 14       **by the commission. In all cases, the amount must be sufficient to**  
 15       **close the merchant power plant in a manner that:**

- 16           (1) minimizes the need for further maintenance and
- 17           remediation; and
- 18           (2) provides reasonable, foreseeable, and necessary
- 19           maintenance and remediation after closure for at least twenty
- 20           (20) years after the merchant power plant ceases operations.

21       **(c) The commission may use:**

- 22           (1) a trust fund agreement;
- 23           (2) a surety bond;
- 24           (3) a letter of credit;
- 25           (4) an insurance policy; or
- 26           (5) other proof of financial responsibility;

27       **filed under this section for the closure or post-closure monitoring,**  
 28       **maintenance, or remediation of a merchant power plant approved**  
 29       **by the commission, if the merchant power plant does not comply**  
 30       **with closure or post-closure standards established by the**  
 31       **commission under subsection (d).**

32       **(d) The commission shall adopt rules under IC 4-22-2 to**  
 33       **establish the following:**

- 34           (1) Standards for the proper closure and post-closure
- 35           monitoring, maintenance, and remediation of merchant power
- 36           plants.
- 37           (2) Criteria for how money in a trust fund agreement, a surety
- 38           bond, a letter of credit, an insurance policy, or other proof of
- 39           financial responsibility provided by a merchant power plant
- 40           may be released to the merchant power plant when the
- 41           merchant power plant meets the closure and post-closure
- 42           standards established under subdivision (1).

43       **Sec. 6. (a) Not later than seven (7) days after filing a petition**  
 44       **under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall:**

- 45           (1) send notice of the petition by United States mail to all
- 46           record owners of real property located within one-half (1/2)
- 47           mile of the proposed facility; and



(2) cause notice of the petition to be published in a newspaper of general circulation in each county in which the facility or proposed facility is or will be located.

(b) The notice of the petition shall include:

- (1) a description of the facility or proposed facility; and
- (2) the location, date, and time of the field hearing required by section 7 of this chapter.

**Sec. 7.** Not later than thirty (30) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall conduct a field hearing at a location in a county in which the facility or proposed facility is or will be located. The purpose of the field hearing is to determine local support for the merchant power plant.

**Sec. 8.** Not later than thirty (30) days after the field hearing required by section 7 of this chapter, a majority of the persons described in section 6(a)(1) of this chapter may request in writing a hearing before the commission.

**Sec. 9.** (a) Not later than thirty (30) days after a hearing is requested under section 8 of this chapter, the commission shall conduct a hearing at a location in a county in which the facility or proposed facility is or will be located. The hearing required by this subsection must be held:

- (1) before or at the same time as the hearing required under IC 8-1-8.5-5(b); and
- (2) before the commission issues a certificate of public convenience and necessity under IC 8-1-8.5.

(b) At least ten (10) days before the scheduled hearing, notice of the hearing must be served by first class mail on:

- (1) all record owners of property located within one-half (1/2) mile of the proposed facility; and
- (2) the merchant power plant.

(c) The parties to the hearing include:

- (1) a person entitled to notice under section 9(b)(1) of this chapter; and
- (2) the merchant power plant.

(d) The commission shall accept written or oral testimony from any person who appears at the public hearing, but the right to call and examine witnesses is reserved for the parties to the hearing.

(e) The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

**Sec. 10.** Not later than forty-five (45) days after a hearing is conducted under section 9 of this chapter, the commission shall issue written findings based on the testimony presented at the hearing. To the extent the commission's findings differ from testimony presented at the hearing, the commission must explain its findings.

1       **Sec. 11. When considering whether to approve a merchant**  
2 **power plant, the commission shall give preference to the following**  
3 **locations for siting:**

- 4       (1) **Brownfield sites that are isolated from populated areas.**  
5       (2) **Sites of existing or former utilities that can be replaced or**  
6       **repowered.**  
7       (3) **Other sites identified for power plant or heavy industrial**  
8       **development in local land use plans before the initiation of site**  
9       **selection for the facility.**

10       **Sec. 12. (a) For purposes of this section:**

- 11       (1) **"department" refers to the department of natural**  
12       **resources; and**  
13       (2) **"water resource" has the meaning set forth in**  
14       **IC 14-25-7-8.**

15       (b) **When considering whether to approve a merchant power**  
16 **plant, the commission shall obtain a recommendation from the**  
17 **department regarding the merchant power plant's planned use of**  
18 **and its potential effect on the water resource.**

19       (c) **To make its recommendation, the department may do the**  
20 **following:**

- 21       (1) **Rely on the merchant power plant's water resource**  
22       **assessment under subsection (d).**  
23       (2) **Consult with and advise users of the water resource.**  
24       (3) **Enter upon any land or water in Indiana to evaluate the**  
25       **effect of the merchant power plant on the water resource.**  
26       (4) **Conduct studies to evaluate the availability and most**  
27       **practical method of withdrawal, development, conservation,**  
28       **and use of the water resource.**  
29       (5) **Require metering or other reasonable measuring of water**  
30       **withdrawals and reporting of the measurement to the**  
31       **department.**  
32       (6) **Engage in any other activity necessary to carry out the**  
33       **purposes of this section.**

34       (d) **A merchant power plant shall provide an assessment of its**  
35 **effect on the water resource and its users to the commission and**  
36 **the department. The assessment shall be prepared by a licensed**  
37 **professional geologist (as defined in IC 25-17.6-1-6.5) or an**  
38 **engineer licensed under IC 25-31-1. The assessment must include**  
39 **the following information:**

- 40       (1) **Sources of water supply.**  
41       (2) **Total amount of water to be used by the merchant power**  
42       **plant for each source.**  
43       (3) **Location of wells or points of withdrawal.**  
44       (4) **Ability of the water resource to meet the needs of the**  
45       **merchant power plant and other users.**  
46       (5) **Probable effects of the merchant power plant's use and**  
47       **consumption of the water resource on other users.**

1           **(6) Alternative sources of water supply.**

2           **(7) Conservation measures proposed by the merchant power**  
 3           **plant for reducing the plant's effect on the water resource.**

4           **(8) Other information required by any other law, rule, or**  
 5           **regulation.**

6           **Sec. 13. Following the approval of a petition by the commission,**  
 7           **the merchant power plant shall:**

8           **(1) notify the commission upon becoming an affiliate of any**  
 9           **regulated Indiana utility selling electricity at retail to Indiana**  
 10           **consumers, at which time the commission may reassert any**  
 11           **jurisdiction it had declined under IC 8-1-2.5;**

12           **(2) obtain prior commission approval with respect to the sale**  
 13           **of any electricity to any affiliated regulated Indiana retail**  
 14           **utility or any affiliate of a regulated Indiana retail utility; and**

15           **(3) obtain prior commission approval of any transfers of**  
 16           **ownership of the facility or its assets."**

17           Page 10, between lines 6 and 7, begin a new paragraph and insert:

18           "SECTION 5. IC 8-1-2-115 IS REPEALED [EFFECTIVE JULY 1,  
 19           2002]."

20           Renumber all SECTIONS consecutively.

(Reference is to ESB 29 as printed February 22, 2002.)

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Representative Pelath